

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
Case No. 1:21-cv-00067-MR**

DMARCIAN, INC.,

Plaintiff,

v.

DMARC ADVISOR BV,
f/k/a dmarcian Europe BV,

Defendant.

**DEFENDANT’S ANSWER TO
THIRD AMENDMENT TO
COMPLAINT**

Defendant DMARC Advisor BV files this Answer under Federal Rule of Civil Procedure 15(a)(3) to Plaintiff dmarcian, Inc.’s Third Amendment to Complaint, ECF No. 362.

PLAINTIFF’S THIRD AMENDMENT TO COMPLAINT

The Third Amendment to Complaint is a one-page document in which Plaintiff “amends its Second Amended Complaint (Doc. 51)” by “amend[ing] its Prayer for Relief to add the following request for relief: Entry of judgment declaring ownership rights as to the copyright registered as TX0008941559.” ECF No. 362 at 1. DMARC Advisor understands Plaintiff’s new request for relief to seek a declaration that Plaintiff owns the copyright or copyrights to HTML and Python that

Eudaemonic Development, LLC or Timothy G. Draegen created in 2012. *See* ECF No. 357 at 9–11 (granting leave to amend).

DMARC ADVISOR’S RESPONSE

DMARC Advisor denies that Plaintiff is entitled to “[e]ntry of judgment declaring ownership rights as to the copyright registered as TX0008941559.” ECF No. 362. That declaration would not resolve any controversy between Plaintiff and DMARC Advisor because DMARC Advisor has never asserted ownership of a copyright to HTML or Python that Eudaemonic Development or Draegen created in 2012. To be sure, DMARC Advisor has identified “contradictory evidence present[ing] a factual question about who wrote the (missing) February 2012 code,” ECF No. 319 at 5, but there is no longer a case or controversy over the “ownership rights as to the copyright,” ECF No. 362 at 1, now that the Court has dismissed Plaintiff’s copyright infringement claim with prejudice, *see* ECF No. 360 at 57. In addition, the same registration failures that barred Plaintiff from pursuing a copyright infringement claim also bar it from obtaining a corresponding declaratory judgment. *See* ECF No. 320 at 8–11.

DEMAND FOR JURY TRIAL

DMARC Advisor continues to demand a trial by jury for all claims and issues so triable.

Dated: May 21, 2024

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

/s/ Samuel B. Hartzell

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